



June 4, 2001

Mr. David M. Feldman
Feldman & Rogers, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2001-2296

Dear Mr. Feldman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147898.

Galveston College (the "college"), which you represent, received a written request for certain information pertaining to the proposed sell of real property owned by the college. You state that most of the requested information has been released to the requestor. However, the college seeks to withhold pursuant to section 552.111 of the Government Code certain records coming within the ambit of the following requests:

Any application (and all supporting materials) submitted by the College to the United States Department of Education since January 1, 1998, in connection with any proposed sale or lease of the Property [and]

....

Any other correspondence to or from the College since January 1, 1998, with any person or entity concerning any of the foregoing.

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the governmental body's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added); *see also City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan. 13, 2000). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). Additionally, in the case of interagency communications, section 552.111 is not demonstrated to apply unless the agencies between which the information is passed are shown to share a privity of interest or common deliberative process with regard to the policy matter at issue. Open Records Decision No. 561 at 9 (1990).

You have submitted to our office as responsive to the request two sets of documents, labeled Exhibit B and Exhibit C. Exhibit B consists of a series of correspondence between the college and the United States Department of Education discussing the proposed sale of college property deeded to the college by the federal government. *See* 40 U.S.C. § 471.001 *et seq.* However, you have not demonstrated, nor can we discern from our review of the information at issue, that there exists in this particular instance a privity of interest between the college and the Department of Education. Consequently, we cannot conclude that section 552.111 protects any of the information contained in Exhibit B. Because you have not met your burden under section 552.111, we conclude that the college must release Exhibit B in its entirety.

On the other hand, Exhibit C consists of an internal communication between college officials concerning the sell of property at issue and constitutes "advice, opinion, or recommendation" regarding policy matters. We further conclude that any factual information contained in Exhibit C is inextricably intertwined with information protected by section 552.111. The college therefore may withhold Exhibit C in its entirety pursuant to section 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

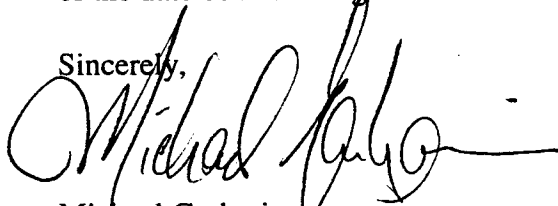
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", with a long horizontal flourish extending to the right.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 147898

Encl. Submitted documents

cc: Mr. Fredric Weber
Fulbright & Jaworski
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(w/o enclosures)